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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 17 1989

Joseph E. Micucci, D.D.S. Bellevue Medical Building 660 Lincoln Avenue Pittsburgh, Pennsylvania 15202

Dear Dr. Micucci:

This letter responds to your July 30, 1989, request for information regarding the regulatory status of scrap dental amalgam under the Resource Conservation and Recovery Act (RCRA) and potential liability under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). These issues will be addressed separately.

Dental amalgam is not specifically listed as a hazardous waste under RCRA. The burden on the generator is to then determine whether the amalgam exhibits a characteristic of a hazardous waste. You indicated in your letter that the American Dental Association (ADA) has conducted research that indicates that amalgam does not exhibit the characteristic of EP toxicity. If true, the amalgam would not be a hazardous waste. However, the responsibility for determining the regulatory status of a waste is borne by the individual generator (who may cite the ADA research as applying knowledge of his waste in determining the regulatory status).

You also state that your collections of amalgam for recycling or refining are not expected to exceed 100 kg per month. A generator (in this case, the dentist or dental supply house) of less than 100 kg per month of total hazardous waste (not any one particular hazardous waste) or 1 kg per month of acute hazardous waste is considered a conditionally exempt small quantity generator. The wastes generated by such a generator is exempt from regulation provided the generator complies with the provisions found at 40 CFR 261.5. If, however, the amalgam is not a hazardous waste, this exempt status would not apply since there would be no need for the exemption.

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Regarding your potential liability under section 107 of CERCLA, this liability is not dependent upon a material's RCRA regulatory status. Rather, section 107 states that in the event of a release or threatened release of a hazardous substance, any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person shall be liable for the costs or response. This liability is based upon a person's

-2-

contributions to the release or threatened release of hazardous substances not necessarily "wastes," although hazardous wastes are certainly included) as defined under section 101(14) of the CERCLA sta???. Should your dental amalgam be composed of any constituents, that meet the definition of CERCLA hazardous substances, and there is a release from the reclamation facility (or disposal facility) that received your amalgam, you may be subject to joint and several liability in an enforcement action. However, each enforcement action is case-specific and liability would be determined by the implementing agency in coordination with the principle responsible parties.

The regulatory status of amalgam provided in this letter applies to Federal regulations. State regulations may be more stringent, and I encourage you to contact your State regulatory agency for an interpretation of the applicable state regulations. Should you have any further questions regarding the status or CERCLA liability of your scrap amalgam, you may contact the RCRA/CERCLA Hotline at 1-800-424-9346, or may contact Mitch Kidwell, of my staff, at (202) 475-8551.

Sincerely,

Michael J. Petruska Acting Chief Waste Characterization Branch

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